

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 82-5

TO: ALL INTERESTED PARTIES

SUBJECT: Availability of Section 402(b)(19) Exemption

General Background

The Bureau receives numerous requests about the availability of the exemption from registration contained in Section 402(b)(19) of the Michigan Uniform Securities Act, 1964 PA 265, as amended. Many of these requests involve similar facts and address issues which have previously been determined by the Bureau in various no action letters and interpretive opinions.

Section 402(b)(19) of the Act exempts from registration "any transaction incident to a class vote of the shareholders pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation."

Three of the most commonly submitted fact situations for no action or interpretation are as follows:

- (1) The "phantom bank" reorganization frequently used in establishing bank holding company ownership of an operating bank. In these reorganizations, a new corporation is created solely for the purpose of the reorganization with the holding company as its only shareholder. An operating or "target bank" is then merged into this new corporation pursuant to the appropriate banking statute and a majority vote of the target company shareholders. As part of the plan, the existing shareholders of the target company exchange their shares at an agreed upon rate for shares in the bank holding company. Sometimes the new corporation will then change its name to that of the target bank and the business continues in the new corporation with the bank holding company as its sole shareholder.
- (2) The "share exchange" is a creature of statute in several states. Share exchanges are similar to a corporate merger with the primary distinction being that the shareholders of the surviving corporation are not required to vote on the acquisition. A majority vote of the shareholders of the target corporation is required to approve the share exchange pursuant to which the shareholders of the target company exchange their shares for shares of the surviving corporation.

- (3) A corporation purchases the assets and assumes the liabilities of a business trust or REIT in exchange for its stock. The trust or REIT is then terminated and the corporation stock distributed in liquidation to the beneficial owners of the trust or REIT. The transaction involving the exchange of assets for stock and the termination of the trust is subject to approval by a majority vote of the beneficial owners and is similar to the vote of shareholders in approving a corporate sale of the assets and dissolution.

Action or Interpretation:

In interpreting the statute, the Bureau has determined that the exemption from registration contained in Section 402(b)(19) is available in the above described fact situations. In each instance, the transaction is sufficiently analogous to those specified in Section 402(b)(19) that registration is not required for investor protection.

The Bureau will no longer issue no action letters or interpretive opinions in these fact situations. Requests for no action letters or interpretive opinions relating to Section 402(b)(19) must be accompanied by a statement of facts describing a situation different from those outlined above. Such requests should be addressed to the Examination Division of the Corporation and Securities Bureau and should be prepared in accordance with the Bureau's Release No. 81-3.

Authority:

Act 265 of 1964, Section 402(b)(19).

Signed by E. C. Mackey, Director
Corporation & Securities Bureau
Dated: July 26, 1982